

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUN - 8 2000
FCC MAIL ROOM

In the Matter of)	
Lake Cedar Group LLC's)	
Petition for Expedited Special Relief)	DA 00-764
And Declaratory Ruling Seeking)	
Preempting of a Resolution by)	
the Board of County Commissioners of)	
Jefferson County, Colorado)	

CANYON AREA RESIDENTS FOR THE ENVIRONMENT REPLY COMMENTS
IN OPPOSITION TO LAKE CEDAR GROUP'S PETITION
FOR EXPEDITED SPECIAL RELIEF AND
DECLARATORY RULING

INTRODUCTION

The vast majority of the public comments filed in this matter urge the FCC to reject the broadcasters' petition for preemption. CARE agrees with the comments of these individuals, cities, counties, the Colorado legislature, the National Association of Counties, the National League of Cities and others that the FCC should not preempt Jefferson County. CARE replies to those few who have filed public comments in support of preemption by showing that their reasons for urging preemption have to do with personal gain, erroneous information or the misperception that alternative sites for digital deployment do not exist.

BEAR CREEK DEVELOPMENT CORPORATION AND PAXSON COMMUNICATION
COMMENTS

Both Bear Creek Development Corporation (BCDC), owner of a site on which two (2) towers are located known as Mount Morrison, and one of its tower tenants, Paxson Communications (Channel 59), have submitted comments in this proceeding. BCDC is suggesting to the FCC that the FCC should defer making any decision in this case until BCDC makes an unknown and unspecified "settlement proposal" to Jefferson County regarding zoning appeals and violations unrelated to this case, currently pending on Mount Morrison. Paxson is apparently asserting that the FCC should preempt the Jefferson County zoning decision in the LCG case because Jefferson County, in those unrelated cases, has determined that a new 300 foot tower should not be permitted on Mount Morrison and that Paxson's broadcast TV use of a tower limited to microwave relay uses is a zoning violation.

BCDC did obtain a special use permit from the Jefferson County Commissioners in 1981 to erect a 60-foot "microwave relay" tower on Mount Morrison. BCDC's application for a special use permit and the approval was specifically limited to use of the tower for microwave relay purposes. A 60-foot height limitation was placed on the tower. In the early 1990's, United Cable, the "microwave relay" user of the tower, abandoned the tower in lieu of more advanced technologies for the receipt and delivery of cable signals.

In 1995, BCDC and Paxson illegally placed a high-power broadcast TV antenna on the microwave relay tower and illegally extended the height of the

tower to 120 feet. Although a miscellaneous permit was and is a necessary prerequisite to any new antenna, BCDC and Paxson failed to apply or obtain a permit prior to placement of the antenna. Jefferson County provided several notices of these zoning violations to BCDC, BCDC failed or refused to come into compliance, and the County filed a zoning violation complaint against BCDC. In order to avoid prosecution for the zoning violation, BCDC submitted an application for a new special use approval, seeking to replace the 60-foot microwave relay tower with a new 300-foot, multi-use telecommunications tower. The request for the new tower was denied for numerous reasons and the zoning violation remains extant. [See attached Appendix V]

Respectfully, the comments of both BCDC and Paxson have little or no relevance to these proceedings. BCDC's request is inappropriate and disingenuous. Obviously, BCDC's request for a delay, while it formulates and submits some undisclosed proposal, is made in the unveiled context of believing that its "proposal" will have more viability if accompanied by the threat of an impending FCC decision on preemption. Paxson's problems are of its own making. It admittedly erected an antenna without a required permit. When it applied for the permit several years later, it was correctly denied because the tower on which it was placed is specifically limited to microwave relay uses. Paxson did not do its due diligence, acted illegally, and now

apparently believes that the FCC's intervention in an unrelated case will somehow operate to Paxson's benefit.

C.A.R.E. requests that the FCC act quickly and decisively in denying LCG's unprecedented petition, so that the local government authorities with jurisdiction, the broadcasters, and interested citizens can address tower and antenna siting issues locally, in accord with applicable land use laws and procedures, and without the "threat" of ultra vires and unconstitutional federal intervention. The longer the FCC allows LCG to believe that the FCC will preempt and force supertower siting on Lookout Mountain, the longer it will be before LCG takes any affirmative action in the pursuit of alternatives. Even if Bear Creek were to work out an agreement with Jefferson County, LCG has shown no inclination to go to any other site and likely will not, until the FCC disabuses LCG of the notion that the FCC will preempt and give them the Lookout Mountain site. The longer the FCC holds this in limbo, the later DTV will come to Denver.

COMMENTS OF NACO, NLC, COLORADO LEGISLATURE, COLORADO DELEGATION

The very specter of "FCC Preemption" is inappropriate because, as demonstrated in numerous public comments filed in this action, the FCC does not have the authority to preempt under these circumstances. The reaction against this proposed preemption is growing. The Colorado Legislature and the

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Lake Cedar Group LLC's)	
Petition for Expedited Special Relief)	DA 00-764
And Declaratory Ruling Seeking)	
Preempting of a Resolution by)	
the Board of County Commissioners of)	
Jefferson County, Colorado)	

CANYON AREA RESIDENTS FOR THE ENVIRONMENT REPLY COMMENTS
IN OPPOSITION TO LAKE CEDAR GROUP'S PETITION
FOR EXPEDITED SPECIAL RELIEF AND
DECLARATORY RULING

INTRODUCTION

The vast majority of the public comments filed in this matter urge the FCC to reject the broadcasters' petition for preemption. CARE agrees with the comments of these individuals, cities, counties, the Colorado legislature, the National Association of Counties, the National League of Cities and others that the FCC should not preempt Jefferson County. CARE replies to those few who have filed public comments in support of preemption by showing that their reasons for urging preemption have to do with personal gain, erroneous information or the misperception that alternative sites for digital deployment do not exist.

BEAR CREEK DEVELOPMENT CORPORATION AND PAXSON COMMUNICATION
COMMENTS

Both Bear Creek Development Corporation (BCDC), owner of a site on which two (2) towers are located known as Mount Morrison, and one of its tower tenants, Paxson Communications (Channel 59), have submitted comments in this proceeding. BCDC is suggesting to the FCC that the FCC should defer making any decision in this case until BCDC makes an unknown and unspecified "settlement proposal" to Jefferson County regarding zoning appeals and violations unrelated to this case, currently pending on Mount Morrison. Paxson is apparently asserting that the FCC should preempt the Jefferson County zoning decision in the LCG case because Jefferson County, in those unrelated cases, has determined that a new 300 foot tower should not be permitted on Mount Morrison and that Paxson's broadcast TV use of a tower limited to microwave relay uses is a zoning violation.

BCDC did obtain a special use permit from the Jefferson County Commissioners in 1981 to erect a 60-foot "microwave relay" tower on Mount Morrison. BCDC's application for a special use permit and the approval was specifically limited to use of the tower for microwave relay purposes. A 60-foot height limitation was placed on the tower. In the early 1990's, United Cable, the "microwave relay" user of the tower, abandoned the tower in lieu of more advanced technologies for the receipt and delivery of cable signals.

In 1995, BCDC and Paxson illegally placed a high-power broadcast TV antenna on the microwave relay tower and illegally extended the height of the

tower to 120 feet. Although a miscellaneous permit was and is a necessary prerequisite to any new antenna, BCDC and Paxson failed to apply or obtain a permit prior to placement of the antenna. Jefferson County provided several notices of these zoning violations to BCDC, BCDC failed or refused to come into compliance, and the County filed a zoning violation complaint against BCDC. In order to avoid prosecution for the zoning violation, BCDC submitted an application for a new special use approval, seeking to replace the 60-foot microwave relay tower with a new 300-foot, multi-use telecommunications tower. The request for the new tower was denied for numerous reasons and the zoning violation remains extant. [See attached Appendix V]

Respectfully, the comments of both BCDC and Paxson have little or no relevance to these proceedings. BCDC's request is inappropriate and disingenuous. Obviously, BCDC's request for a delay, while it formulates and submits some undisclosed proposal, is made in the unveiled context of believing that its "proposal" will have more viability if accompanied by the threat of an impending FCC decision on preemption. Paxson's problems are of its own making. It admittedly erected an antenna without a required permit. When it applied for the permit several years later, it was correctly denied because the tower on which it was placed is specifically limited to microwave relay uses. Paxson did not do its due diligence, acted illegally, and now

apparently believes that the FCC's intervention in an unrelated case will somehow operate to Paxson's benefit.

C.A.R.E. requests that the FCC act quickly and decisively in denying LCG's unprecedented petition, so that the local government authorities with jurisdiction, the broadcasters, and interested citizens can address tower and antenna siting issues locally, in accord with applicable land use laws and procedures, and without the "threat" of ultra vires and unconstitutional federal intervention. The longer the FCC allows LCG to believe that the FCC will preempt and force supertower siting on Lookout Mountain, the longer it will be before LCG takes any affirmative action in the pursuit of alternatives. Even if Bear Creek were to work out an agreement with Jefferson County, LCG has shown no inclination to go to any other site and likely will not, until the FCC disabuses LCG of the notion that the FCC will preempt and give them the Lookout Mountain site. The longer the FCC holds this in limbo, the later DTV will come to Denver.

COMMENTS OF NACO, NLC, COLORADO LEGISLATURE, COLORADO DELEGATION

The very specter of "FCC Preemption" is inappropriate because, as demonstrated in numerous public comments filed in this action, the FCC does not have the authority to preempt under these circumstances. The reaction against this proposed preemption is growing. The Colorado Legislature and the

Colorado members of the United States Congress have directly sent the FCC their public comments supporting local control of zoning decisions and condemning this preemption effort.

Colorado Counties, Inc, the Denver metro area municipalities of Denver, Arvada, Aurora, Brighton, Castle Rock, Cherry Hills Village, Commerce City, Douglas County, Englewood, Edgewater, Glendale, Golden, Greenwood Village, Lafayette, Lakewood, Littleton, Northglenn, Parker, Sheridan, Superior, Thornton, Westminster, and Wheat Ridge all have filed public comments opposing this preemption. Those familiar with the Denver metropolitan area know that these municipal filings encompass most of the geographic area involved. Not a single municipality, county or Colorado delegation member supports this proposed FCC action.

The public comments filed by the Colorado Legislature, the Golden City Council and most of the Colorado Delegation are not yet appearing on the FCC list of filed Public Comments. These comments were filed by the deadline. The Resolution against preemption passed by the Colorado Legislature is attached as Appendix W. The Golden City Council filing is attached as Appendix AA and the Colorado Delegation letter as Appendix BB.

The National Association of Counties and the National League of Cities condemn this proposed course of conduct. Cities and counties across this country such as Chicago, Cook County, Illinois and 50 other Illinois

municipalities, Detroit, Ft. Worth and the Texas Coalition of Cities on Franchised Utility Issues have sent in public comments against this preemption. (Public Comments filed by their attorney, John Pestle).

Since the filing of these public comments against preemption, an additional decision impacting this proposed preemption has occurred which acknowledged that zoning authorities could refuse to permit towers that would violate their setback requirements for protection against tower falls. On May 9, 2000, the United States District Court for the District of Maine upheld the Town of Falmouth's denial of a conditional use permits and variances for a transmission tower. Industrial Communications and Electronics, Inc. v Town of Falmouth, USDC Maine Civil Nos. 98-397-P-H and 99-96-PH attached as Appendix CC. The court found that the zoning board decisions were based upon substantial evidence and upheld the provision of the zoning regulation requiring that towers be setback sufficiently from the fall zone. Id at 18.

KUVO COMMENTS ALTERNATIVE SITES -FEDERAL LANDS

Contrary to KUVO's unsubstantiated representation in their public comments that "the availability of sites for broadcasting towers is almost nonexistent", alternative sites to Lookout Mountain are available and feasible. The May 10 filings of Squaw Mountain, @ Contact, "Alternative Analysis of DTV Tower Sites in Denver Area" and pages 23 through 28 of the C.A.R.E. filing establish a

number of presently available privately owned alternative sites for broadcasting towers. The analysis by C.A.R.E.'s electrical engineer Al Hislop has been supported his credentials, recommendations of colleagues, and independent analysis. (See Appendix Z.)

These private sites are exclusive of potential sites in hundreds of thousands of acres of Federally owned or controlled lands on the Colorado Eastern slope that range from the former Rocky Flats Nuclear Weapons Plant to numerous high peaks. Respectfully, if the FCC determines that it is appropriate to intervene at all in local tower siting issues, it should be to identify federal lands which might be suitable for telecommunication land uses and to secure the necessary federal agency approvals for tower location on federal lands.

Federal agencies are encouraged to make Federal property available for the placement of new telecommunications services. In Section 704(c) of the Telecommunications Act of 1996, Congress instructed "the President or his designee" to "prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services." Section 704(c) of the Telecommunications Act of 1996.

In August 1995, President Clinton signed an executive memorandum directing Federal agencies to assist the wireless communications industry in identifying rooftop and ground sites for antennas on Federal properties. The President directed GSA to coordinate this effort. The passage of the Telecommunications Act of 1996 further stressed the importance of this effort. Early in 1997, GSA took the lead and established a national team of leasing professionals trained in this specialized area. There is no indication that LCG or the FCC have consulted the GSA on tower sites on Federal land. The General Services Administration, in coordination with other Government departments and agencies as well as wireless telecommunications industry representatives, has developed the procedures which include:

In accordance with section 704(c) of the Telecommunications Act of 1996, Public Law 104-104, and President Clinton's August 10, 1995, memorandum entitled ``Facilitating Access to Federal Property for the Siting of Mobile Services Antennas" the following procedures shall be followed by Executive departments and agencies:

Guiding Principles

1. Requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department's or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question.

2. Upon request, and to the extent permitted by law and where practicable, executive departments and agencies shall make available Federal Government buildings and lands for the siting of mobile services antennas. This should be done in accordance with Federal, State and local laws and regulations, and consistent with national security concerns (including minimizing mutual electromagnetic interactions), public health and safety concerns, environmental and aesthetic concerns, preservation of historic buildings and monuments, protection of natural and cultural

resources, protection of national park and wilderness values, protection of National Wildlife Refuge systems, and subject to any Federal requirements promulgated by the agency managing the facility and the Federal Communications Commission, the Federal Aviation Administration, National Telecommunications and Information Administration, and other relevant departments and agencies.

61 Fed. Reg. 14100, March 29, 1996.

While C.A.R.E. recognizes that the statutory and executive directives cited above may only be technically applicable to the siting of towers and antennae for wireless communications, the fact remains that there are hundreds of thousands of acres of federal land in Colorado which may be suitable for broadcast telecommunication land uses.

In addition to KUVU being wrong about alternative sites, KUVU's comments should be disregarded because KUVU lacks credibility. KUVU asserts, "The protests and negative claims concerning RF emissions are unsubstantiated." (May 4 filing by KUVU President, Florence Hernandez-Ramos.) The FCC's own records set forth in Appendices Y and X document that although KUVU has been one of the sources of RF being over the FCC RF limits in public areas on Lookout Mountain, KUVU has never reported this fact to the FCC. As discussed at pages 32 through 39 in the C.A.R.E. May 10 filing, the FCC relies on broadcasters to self-report on the RF levels. KUVU is yet another Lookout Mountain broadcaster who has reported to the FCC that they have never exceeded the RF limits when in fact they have repeatedly exceeded the RF limits. KUVU was added to the Channel 6 Public

Television Tower in 1985 without notifying Jefferson County even though the antenna was mounted on a legal nonconforming television tower. The EPA measurements in 1985 and the Weller report to the FCC in 1997 advising that the RF levels were exceeded at the KUVU location failed to bring KUVU within the FCC limits. C.A.R.E. reports to the FCC were not believed until the FCC conducted their own measurements and found that the RF limits were violated. The FCC issued no punishment and now KUVU has the audacity to declare their "compliance." If they are compliant now, it is only through the repeated measurements of the FCC, Jefferson County and the residents documenting that KUVU was exceeding the ANSI limits. FCC records documenting these facts are attached as Appendix X. A short synopsis follows:

In 1985 the KUVU antenna added to Channel 6 tower. FCC document bates # 001717. The FCC required compliance with RF. Jefferson County not consulted even though the Channel 6 tower is a legal non-conforming tower in a residential neighborhood. FCC document bates # 001726-001729.

9/ 22-26/86, EPA investigation of Lookout Mountain antenna farms reported that "the KRMA-TV / KCFR-FM / KUVU-FM transmitters on Colorow Road produced power densities exceeding 200 uW/cm² (EPA reported 350 to 425 uW/cm²). (CARE May 10, 2000 filing Exhibit Volume II Appendix F)

November 25, 1996-KUVU FM Radio Station Renewal filed by President Florence Hernandez-Ramos. FCC documents 066000-066007

KUVU checks off that there is no significant environmental impact, including exposure of workers or the general public to levels of RF radiation exceeding identified guidelines issued by the American National Standards Institute (ANSI) FCC document bates # 066002 and further explains:

"I have examined the Commission's environmental requirements in 47 CFR Section 1.1307 as outlined in Appendix C to the License Renewal Booklet. Based on my completion of the worksheets therein, I have determined that operation of my facilities will not have a significant environmental impact as defined by Section 1.1307 which includes consideration of the exposure of workers or the general public to levels of Radio Frequency radiation exceeding identified guidelines issued by the American National Standards Institute." FCC document bates # 066003.

October 21, 1997

Robert Weller of Hammett & Edison, RF engineer for Lake Cedar Group (LCG), measures RF exposure levels on Lookout Mountain. He finds "ground level areas that exceed the public limits" in the vicinity of the Channel 6 tower, and reports this to the FCC on October 28, 1997. (CARE May 10 filing V.4 document 060900)

July 18, 1998

CARE engineers make measurements on Lookout Mountain and confirm the excessive levels found by Weller near the Channel 6 tower. They also find RF exposure levels above FCC limits

FCC Nov. 12, 1998 Report

The RF limits for public exposure were exceeded at several locations by the Channel 6 tower.

"by turning off the FM stations approximately 30% to 35% of the RF field was attributed to the KUVO signal." The FCC recommended that KUVO reduce their power. (See Appendix Y.)

December 15, 1998

Jefferson County grants a one-year fence permit to surround hot spots on the public right-of-way on Colorow Road, near the Channel 6 tower. Representatives of KCFR and KUVO promise to resolve the RF radiation problem "one way or another" by December 31, 1999.

FCC Jan. 4, 1999 Report

“(3) Area in immediate vicinity of KRMA-TV/KUVO/KCFR-FM tower. ¼ In two locations, one adjacent to the tower and the other directly across Colorow Road, spatially-averaged readings were obtained in October that were slightly in excess of the public exposure limits. In very localized areas adjacent to the tower¼. spatially-averaged readings were obtained up to about 190% of the public limits and across the road from the transmitter building the spatially-averaged readings were up to 104% of the public limits.” (See Appendix S filed with Errata, pg. 4.) Even after taking the measures recommended by the FCC, the RF was still over the limit and KUVO was ordered to further reduce their power.

December 14, 1999

Jefferson County grants a two-year extension for the one-year permit to fence the public right-of-way on Colorow road near the Channel 6 tower. KUVO and KCFR have made no attempt to remedy the RF excesses.

January 24, 2000

CARE engineer makes measurements of RF exposure levels near the Channel 6 tower on Colorow Road. RF levels on the public right-of-way on both sides of Colorow road now appear higher than before the power reductions required by the FCC in 1998.

January 25, 2000

Jefferson County and CARE have a joint measurement session at several places on Lookout Mountain. With good agreement between the two meters, RF exposure levels are found to exceed county and federal standards near the Channel 6 tower on Colorow road, with levels typically 125% MPE.

These records document both that KUVO lacks credibility and that RF limits have been repeatedly exceeded in the residentially zoned area in which KUVO broadcasts.

CONCLUSION

A small number of comments for preemption came from members of the public who evidently believed document sent out by the Public Television station that

free over the air television would cease unless the FCC preempted Jefferson County. That letter was addressed in depth in CARE's original filing. The few other comments filed in support of preemption come from those who have exceeded RF limits or who have violated Jefferson County zoning regulations.

This petition for preemption is formally opposed by most of the municipal governments of metropolitan Denver, all of the Colorado Counties, the Colorado Delegation and the Colorado legislature. The cities, counties and legislature of Colorado have made it clear that they believe that the FCC should not preempt Jefferson County's zoning decision and that to do so would be a violation of the Tenth Amendment of the United States Constitution. Their belief is correct.

Alternative sites for digital television antennas exist. Preemption under these circumstances is unwarranted.

Respectfully submitted,

HOLLEY, ALBERTSON & POLK, P.C.

By: 

Scott D. Albertson, #8022

Attorneys for C.A.R.E.

1667 Cole Boulevard, Suite 100

Golden, Colorado 80401

Phone: (303) 233-7838

Fax: (303) 233-2860

CERTIFICATE OF SERVICE

I, Scott D. Albertson, hereby certify that on June 8, 2000, I mailed copies of the foregoing **CANYON AREA RESIDENTS FOR THE ENVIRONMENT REPLY COMMENTS IN OPPOSITION TO LAKE CEDAR GROUP'S PETITION FOR EXPEDITED SPECIAL RELIEF AND DECLARATORY RULING** by first-class postage prepaid mail to the following:

Edward W. Hummers, Jr.
Holland & Knight, LLP
Suite 400
2100 Pennsylvania Avenue NW
Washington, D.C. 20037-3202

Henry L. Baumann
National Association of Broadcasters
1771 N Street, NW
Washington, D.C. 20036

Claire B. Levy, Esq.
3172 Redstone Road
Boulder, CO 80303

Richard Schmidt, Jr.
Attorney for Bear Creek Development
Cohn and Marks
1920 N. Street, N.W. Suite 300
Washington DC 20036-1622

John R. Feore, Jr.
Attorney from Paxson Denver License, Inc.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., N.W.
Suite 800
Washington, DC 20036-6802

Florence Hernandez-Ramos
KUVU FM
P.O. Box 11111
Denver, Co. 80211


SCOTT D. ALBERTSON

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Lake Cedar Group LLC's)	
Petition for Expedited Special Relief)	DA 00-764
And Declaratory Ruling Seeking)	
Preempting of a Resolution by)	
The Board of County Commissioners of)	
Jefferson County, Colorado)	

CANYON AREA RESIDENTS FOR THE ENVIRONMENT REPLY COMMENTS
IN OPPOSITION TO LAKE CEDAR GROUP'S PETITION
FOR EXPEDITED SPECIAL RELIEF AND
DECLARATORY RULING

ADDITIONAL APPENDICES*

Appendix V	Zoning Documents regarding Mount Morrison
Appendix W	Official copy of Colorado Senate Joint Resolution 00-031
Appendix X	Bates numbered documents
001717	KUVO added
001726-001729	FCC granted license
066000-066007	KUVO renewal
066002	KUVO says no significant environmental impact
066003	KUVO says no significant environmental impact
Appendix Y	FCC report dated November 12, 1998
Appendix Z	Resume, Letters of Recommendation, Confirmation of Calculations for Al Hislop
Appendix AA	Golden City Council May 4, 2000 Public Comments to FCC
Appendix BB	Colorado Delegation May 9, 2000 Public Comments to FCC
Appendix CC	Industrial Communications and Electronics, Inc v Town of Falmouth, USDC Maine May 9, 2000, Civil Nos. 98-397-P-H and 99-96-P-H

* Appendices will continue in alphabetical order from first filing and errata beginning with V.

Appendix V

Zoning Documents Regarding Mount Morrison

CASE NO

5481-1

DATE FILED

REZONING APPLICATION

JEFFERSON COUNTY PLANNING DEPARTMENT 1700 ARAPAHOE ST. GOLDEN, COLORADO 80419 (279-6511)

I (we) listed hereunder, hereby request a hearing before the Jefferson County Planning Commission and the Board of County Commissioners concerning proposed rezoning of an unincorporated area of Jefferson County described on page Five of the application.

A. FEE OWNER(S) Bear Creek Development Corp. Reception number of deed _____
 Book and Page 269/515; 285/58; and
2921/874
 Representative Victor F. Boog Approximate Acreage 29

B. PROPOSAL

Street location: Grapevine Road North of Idledale, Colo. and Hwy. 74.

Access directions from major roadway: Hwy. 74 to Idledale, Colo.; then
North on Grapevine Road

Existing Zone District: A-2 Existing Land Use: Vacant

Proposed Zone District: A-2 (Special Use) ^{see} Proposed Land Use: Microwave Relay Station

Existing provisions for water and sewer: N/AProposed provisions for water and sewer: N/A

	YES	NO
-Is court action currently pending on this property:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
-Is the parcel to be rezoned a portion of a larger parcel? If yes, include acreage of remaining parcel: <u>71</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
-Is the area to be rezoned known to contain a natural mineral deposit of limestone used for construction purposes, coal, sand, gravel, or quarry aggregate for which extraction is or will be commercially feasible?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Can it be demonstrated by geologic, mineralogic or other scientific data that such deposit has significant economic or strategic value to the area, State or nation? (C.F. Section 34-1-301 C.R.S. 1973 as amended)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
-I (we) have reviewed uses permitted in the proposed zone district.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
-I (we) am (are) familiar with the posting requirements and rezoning procedure defined in the Zoning Resolution.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

STAFF USE

Accepted by DFKDate 3-16-81Receipt No. 7-122

B. AUTHORIZATION

I hereby depose and state under the penalties of perjury that all statements, proposals, and/or plans submitted with or contained within this application are true and correct to the best of my knowledge.

Notify For:

☒ Hearing

FEE OWNERS

NAME: Bear Creek Development Corp.

COUNTY OF JEFFERSON)
STATE OF COLORADO) ss

ADDRESS: 1717 Washington Avenue

Subscribed and sworn to before me this
5th day of January, 1981.

Golden, Colorado 80401

TELEPHONE: 278-3300

Witness my hand and official seal.

SIGNATURE: Leo N. Bradley, President

Marcia L. Hill
NOTARY PUBLIC

My commission expires: 10/29/84

NAME: _____

COUNTY OF JEFFERSON)
STATE OF COLORADO) ss

ADDRESS: _____

Subscribed and sworn to before me this
____ day of _____, 19____.

TELEPHONE: _____

Witness my hand and official seal.

SIGNATURE: _____

NOTARY PUBLIC

My commission expires: _____

NAME: _____

COUNTY OF JEFFERSON)
STATE OF COLORADO) ss

ADDRESS: _____

Subscribed and sworn to before me this
____ day of _____, 19____.

TELEPHONE: _____

Witness my hand and official seal.

SIGNATURE: _____

NOTARY PUBLIC

My commission expires: _____

NAME: _____

COUNTY OF JEFFERSON)
STATE OF COLORADO) ss

ADDRESS: _____

Subscribed and sworn to before me this
____ day of _____, 19____.

TELEPHONE: _____

Witness my hand and official seal.

SIGNATURE: _____

NOTARY PUBLIC

My commission expires: _____

Notify For:

☒ Hearing

☒ All fee owners are listed.
☐ Remaining fee owners listed on accompanying document.

AUTHORIZED AGENTS: Attached Power of Attorney must be completed.

NAME: Victor F. Boog

ADDRESS: Bradley, Campbell & Carney
1717 Washington Avenue, Golden, Colorado 80401

TELEPHONE: (Business hours) 278-3300

C. LEGAL REPRESENTATIVE AUTHORIZATION

To: Jefferson County Planning Department
Jefferson County Planning Commission
Board of County Commissioners of Jefferson County

YOU ARE HEREBY ADVISED THAT Bear Creek Development Corp.
(fee owner)

has authorized Victor F. Boog of Bradley, Campbell & Carney
(agent's name)

of 1717 Washington Avenue, Golden, Colorado 80401, to act as its
(agent's address)

representative with regard to an application for rezoning of certain real property
located at Grapevine Road North of Idledale, Colo. and Hwy. 74 in
(address)
Jefferson County, Colorado, and described in Attachment One of this application.

BEAR CREEK DEVELOPMENT CORP.

By Leo N. Bradley
(fee owner)
Leo N. Bradley, President

STATE OF COLORADO)
COUNTY OF JEFFERSON) ss

Subscribed and sworn to before me this 5th day of January, 1981.
Witness my hand and official seal.

SEAL

Marcia L. Hill
(Notary Public)

10/29/84
My Commission Expires:

JEFFERSON COUNTY PLANNING DEPARTMENT COMMENTS
June 22, 1981
Board of County Commissioners' Hearing

Case No. SU81-1 Map No. 110
Secs. 27, 28 Twp. 4S Range 70W
BEAR CREEK DEVELOPMENT CORPORATION

Location: Mt. Morrison, east of Idledale
Existing Zoning: Agricultural-Two (A-2)
Proposed Zoning: Agricultural-Two (Special Use)
Approximate Area: 1.294 acres

I. PROPOSAL

- -The applicant wishes to construct a microwave relay transmitting station and a receiving station.

II. ZONING/LAND USE

A. Subject parcel: A-2/vacant

B. Surrounding area:

1/2 mile in all directions: A-2/vacant (Red Rocks Park to the east and City and County of Denver radio tower atop Mt. Morrison)

III. ISSUES

A. Visual Impact

The sites designated for the proposed facilities are areas of moderate to high visual vulnerability, i.e., low ability of the landscape to hide development.

This Special Use request is for a microwave tower structure and equipment building on the transmitter site and for "dish" antennas and an equipment building on the receiver site, as shown on plans submitted by the applicant. The plans indicate the buildings are to be constructed with concrete block. The Special Use site is some distance from any residences in this area. Although the structures will be visible from some residences and properties in the area, it is anticipated that visual impact should be minimal in most cases. It may be desirable to require the structures be of a color similar to the surroundings.

B. Access/Traffic

Traffic to the facilities would consist of routine, periodic maintenance visits.

Access is by an existing private gravel road. Prior to obtaining a building permit, the applicant will be required to have legal access at least 25 feet in width to the sites.

C. Geologic Hazard

Slopes in this area have been identified as susceptible to moderate potential instability. If the structures are to be located on slopes of over 30%, it may be desirable to require engineered foundations.

D. Fire Protection

The sites are located in the Idledale Fire Protection District. Referral comments indicate concern for the ability of equipment and personnel to reach the site in case of fire as the access road is very steep and narrow with several switchbacks.

E. Other Issues

1. No significant impact is anticipated regarding schools, parks or commercial mineral deposits.
2. Community Character

The surrounding area is vacant mountain land, the nearest residence being over 1/2 mile from the sites. It is not anticipated that the presence of these facilities will result in a major impact on the character of this area.

F. Future Land Use Plan

The 1971 Mountain Area Future Land Use Plan recommends agricultural and low density mountain residential uses (1 u/10 ac) for this area.

IV. SUMMARY

- A. Except as identified below, compatibility conflicts with surrounding land uses and the natural environment are not expected:
- B. Potential Major Impacts: None
- C. Potential Minor Impacts:
 - 1) Visual Image
 - 2) Geologic Hazard
 - 3) Fire Protection

V. PLANNING COMMISSION RECOMMENDATION

-On May 13, 1981 the Jefferson County Planning Commission recommended approval of this proposal.

VI. REFERRALS

-Replies received in writing from:

1. Idledale Fire District
2. Jefferson County Health Department

COMMENTS PREPARED BY:



David E. Campbell, Planner
Community Planning Section

4.30.81tmf

It was moved by Commissioner M'GILLYCUDDY that the following Resolution be adopted;

BEFORE THE PLANNING COMMISSION

COUNTY OF JEFFERSON

STATE OF COLORADO

RESOLUTION

Case No. SU81-1 Map No. 110

BEAR CREEK DEVELOPMENT CORPORATION

Location:

Grapevine Road, north of Idledale and
Highway 74

Zone District:

Agricultural-Two

Purpose:

Microwave Relay Station

Approximate Area:

1.294 acres

The Jefferson County Planning Commission hereby recommends APPROVAL of the above application on the basis of the following findings:

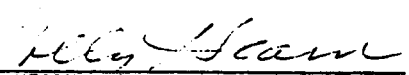
1. That the property was properly posted:
2. That the facts upon which this decision is based include:
 - a. comments and facts presented by the Planning Division;
 - b. testimony presented to this Commission by the Applicant and others interested in this case;
3. That the Commission in making this recommendation wishes to emphasize the following fact:
 - a. that the tower will be no more than 60' tall;
 - b. that the colors of the building and the tower will be as close to the original as possible.

Commission HEARN seconded the adoption of the foregoing Resolution and upon a vote of the Planning Commission as follows:

Commissioner M'GILLYCUDDY	- Aye
Commissioner HEARN	- Aye
Commissioner SPYDELL	- Aye
Commissioner STERNBERG	- Aye
Commissioner PETERSON	- Aye

the Resolution was adopted by unanimous vote of the Planning Commission of the County of Jefferson, State of Colorado.

I, POLLY HEARN, Secretary of the Jefferson County Planning Commission do hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Jefferson County Planning Commission at a regular hearing held in Jefferson County, Colorado, on the 13th day of May, 1981.


POLLY HEARN - Secretary
5.19.81sr

Commissioner Clement
adopted:

moved that the following Resolution be

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF THE COUNTY OF JEFFERSON

STATE OF COLORADO

RESOLUTION NO. CC81-512

Case No. SU81-1

Map No. 110

Applicant:

Bear Creek Development Corporation

Location:

Grapevine Road, north of Idledale
and Highway 74
Sections 27, 28 Township 4 South,
Range 70 West

Zone District:

Agricultural-Two (A-2)

→ Purpose: Microwave Relay Station

Approximate Area:

1.294 acres

WHEREAS, Bear Creek Development Corporation did file an application with the Planning Department of Jefferson County on or about March 16, 1981, to obtain a special use permit on the herein-described property in Jefferson County which is located in the Agricultural-Two (A-2) Zone District; and

WHEREAS, a public hearing was held by the Jefferson County Planning Commission on May 13, 1981, at which time the Planning Commission did, by formal resolution, recommend approval of the subject special use application; and

WHEREAS, after notice as provided by law, a public hearing was held by this Board on June 22, 1981, at which time this matter was continued until June 29, 1981, for decision; and

WHEREAS, based on the evidence, testimony, exhibits, study of the Comprehensive Plan, recommendations of the Jefferson County Planning Commission, comments of the Jefferson County Planning Department, comments of public officials and agencies, and comments from all interested parties, this Board finds as follows:

1. That proper posting, publication and public notice was provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners.
2. That the hearings before the Planning Commission and the Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard at those hearings.
3. That the 1971 Mountain Area Future Land Use Plan recommends agricultural and low density mountain residential uses (1 unit per 10 acres) for the area.
4. That the special use permit would be in conformance with the recommendations of said Future Land Use Plan.

5. That the proposed land use is compatible with allowable land uses in the surrounding area.
6. That the proposed land use is compatible with existing agricultural and residential uses.
7. That no known commercial mineral deposits exist upon the subject property.
8. That the applicant has agreed to comply with the requirements set forth in the Jefferson County Planning Commission's resolution in this case.
9. That for the above-stated and other reasons, the applied for special use is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of Jefferson County.

NOW, THEREFORE, BE IT RESOLVED that Special Use Application No. SU81-1, located within the Agricultural-Two (A-2) Zone District for the following described unincorporated area of Jefferson County be and hereby is APPROVED:

DESCRIPTION: NORTH TOWER SITE

A tract of land located in the SW1/4 of Section 27, T4S, R70W of the 6th P.M., Jefferson County, Colorado, described as follows:

Beginning at the W1/4 corner of said Section 27; thence S1°28'14"E along the West line of the SW1/4 of said Section 27 a distance of 320.05 feet; thence N88°31'46"E a distance of 660.44 feet to the true point of beginning; thence S9°34'43"W a distance of 272.33 feet; thence S72°00'55"E a distance of 143.51 feet; thence N8°14'54" a distance of 285.02 feet; thence N76°52'59"W a distance of 135.61 feet to the true point of beginning.

DESCRIPTION: WEST TOWER SITE

A tract of land located in the SE1/4 of Section 28, T4S, R70W of the 6th P.M., Jefferson County, Colorado, described as follows:

Beginning at the E1/4 corner of said Section 28; thence S1°28'14"E along the east line of the SE1/4 of said Section 28 a distance of 1743.67 feet; thence S88°31'46"W a distance of 358.81 feet to the true point of beginning; thence S88°50'10"W a distance of 142.07 feet; thence S1°50'08"E a distance of 152.97 feet; thence N72°25'27"E a distance of 128.88 feet; thence N6°57'58"E a distance of 117.73 feet to the true point of beginning.

Commissioner Tomsic seconded the adoption of the foregoing Resolution. The roll having been called, the vote was as follows:

Commissioner Robert F. Clement	- "Aye";
Commissioner Walter J. Tomsic	- "Aye";
Commissioner James E. Martin, Chairman	- "Aye";

The Resolution was adopted by unanimous vote of the Board of County Commissioners of the County of Jefferson, State of Colorado.

DATED: June 29, 1981

From: Dannie Brindle
To: RTurner
Date: 10/22/97 10:42am
Subject: Mt. Morrison Zoning Violation

As I understand it a question came up at last night's hearing regarding what exactly the alleged zoning violations are on Mt. Morrison. At this point we are pursuing two alleged violations. The first involves the height of the tower. The special use that was approved many years ago established a maximum height of 60 feet. We believe the tower may exceed this height. The owner of the tower is emphatic that it does not exceed the 60 feet limit and has said he will provide us evidence to that effect. The second alleged violation involves the actual use of the tower. The special use was specific in that the tower was to be used to support a microwave relay station. Field observation and a discussion with the property owner indicates that in fact the tower now supports much more than a relay station. It supports numerous antennae including broadcast facilities.

Regarding the status of the enforcement action, the initial 30 day warning period has passed and the case has been referred to the County Attorney's office for legal action. They will within the next few days be sending the property owner a final notice, which in essence gives them another 2 weeks to remedy the problem. If action to correct the problem hasn't commenced by the end of the 2 week period, we will ask that the Attorney's office proceed with a Summons and Complaint.

If you have any further questions on this matter, please let me know.

CC: EAnderso, TCarl, DHughes

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO

Case No.:

98CV 696

Division:

98 MAR -5 PM 4:01

VERIFIED COMPLAINT

FILED
CLERK OF DISTRICT COURT
JEFFERSON COUNTY, CO

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, STATE OF COLORADO, a body politic and corporate,

Plaintiff,

v.

BEAR CREEK DEVELOPMENT CORPORATION,

Defendant(s).

Plaintiff, Board of County Commissioners of the County of Jefferson, State of Colorado, by and through counsel, the Jefferson County Attorney, complains as follows:

CLAIM FOR RELIEF

1. Defendant owns and/or used the following described parcel of land in unincorporated Jefferson County, Colorado:

See Exhibits A and B attached, unincorporated Jefferson County, Colorado (the "Property").

2. Plaintiff is a body politic and corporate under the laws of the State of Colorado empowered to sue and be sued. §30-11-101(1)(a), 12A, C.R.S. (1997); §30-11-103, 12A, C.R.S. (1986).

3. Plaintiff, pursuant to powers vested in it by law, has adopted a zoning resolution (the "Zoning Resolution") and zoning maps. The Zoning Resolution and zoning maps as amended are now and at all pertinent times have been in full force and effect in Jefferson County, Colorado.

4. The Property has been zoned Agricultural-Two (A-2) under the Zoning Resolution and zoning maps in force in Jefferson County, Colorado, at all pertinent times.

DOCKETED

5. Defendant has constructed and/or used a tower which is taller than sixty feet on the Property. The tower is being used as a television broadcast tower.

6. Defendant has not obtained approval from the County for the use specified in paragraph five.

7. Construction and/or use of radio, television, and microwave transmission towers and equipment which are not approved by the County violates Section 31 of the Zoning Resolution.

8. Plaintiff, by and through its Planning and Zoning Department, has on numerous occasions requested that Defendant comply with the Zoning Resolution, but Defendant has yet to bring the Property into compliance.

9. Defendant's use or permitted use of the Property constitutes a public nuisance.

10. Plaintiff has no adequate remedy at law or otherwise for the harm and damage being done by Defendant's violation of the Zoning Resolution and the continuation of the public nuisance.

11. Irreparable harm, damage, and injury is being done and will continue to be done to Plaintiff and its residents unless the acts and conduct of Defendant are enjoined and Defendant is ordered to discontinue all illegal land uses on the Property.

WHEREFORE, Plaintiff prays that:

A. Defendant be permanently enjoined from violating the Zoning Resolution on the Property.

B. The Court issue an Order directing Defendant within fifteen (15) days to abate the previously described zoning violations.

C. The Court issue an Order authorizing Plaintiff to inspect the Property at the end of this fifteen (15) day period to determine Defendant's compliance.

D. The Court issue an Order authorizing Plaintiff to enter upon Defendant's Property and remove all zoning violations, and to assess Defendant the cost of such removal if Defendant does not comply with the Zoning Resolution within fifteen (15) days.

E. Plaintiff be awarded its costs of this action and any further relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED this 2nd day of March, 1998.

FRANK J. HUTFLESS, #16718
JEFFERSON COUNTY ATTORNEY

By: 

David Hughes, #24425
Assistant County Attorney
100 Jefferson County Parkway, #5500
Golden, Colorado 80419-5500
(303) 271-8959

STATE OF COLORADO)

) ss.

COUNTY OF JEFFERSON)

Dannie Brindle, being of lawful age and being first duly sworn upon oath deposes and says that he has reviewed the Verified Complaint herein, has personal knowledge of the matters set forth herein, and that such matters are true and correct to the best of his knowledge, information, and belief.

DANNIE BRINDLE
Zoning Administrator
Planning & Zoning Department

Subscribed and sworn to before me this 26 day of February, 19 98, by
DANNIE BRINDLE.


Witness my hand and official seal.

My commission expires

12-17-01

Sammy Furr
Notary Public

Witness my hand and office
My Commission expires



Notary Seal for Sammy Ferrell, Notary Public, State of Colorado.

81027695

1981 APR 22 PM 2:21

County of Jefferson State of Co.

12.00

H6

PERSONAL REPRESENTATIVE'S DEED
(TESTATE ESTATE)

THIS DEED is made by MARYANNA QUAINANCE JOHNSON and PATRICIA QUAINANCE BRADLEY as Personal Representatives of the Estate of Mary Ross Quaintance, aka Mary R. Quaintance, aka Mary Quaintance, aka Mrs. A. D. Quaintance, aka Mrs. Arthur D. Quaintance, aka Mrs. Arthur Dunning Quaintance, an unmarried person, Deceased, Grantors, to BEAR CREEK DEVELOPMENT CORPORATION, a Colorado corporation, 1717 Washington Avenue, Golden, Colorado 80401.

WHEREAS, the above-named decedent in her lifetime made and executed her Last Will and Testament dated September 16, 1976, which Will was duly admitted to informal probate on February 11, 1980, by the District Court in and for the County of Jefferson, State of Colorado, Probate No. 80PR76;

WHEREAS, Grantors were duly appointed Personal Representatives of said Estate on February 11, 1980, and are now qualified and acting in said capacity.

NOW, THEREFORE, pursuant to the powers conferred upon Grantors by the Colorado Probate Code, Grantors do hereby sell, convey, assign, transfer and set over unto Grantee, for and in consideration of Ten Dollars and other good and valuable consideration, the following described real property situate in the County of Jefferson, State of Colorado:

LEGAL DESCRIPTION IS ATTACHED HERETO AS
EXHIBIT "A", MADE A PART HEREOF AND INCORPORATED HEREIN BY THIS REFERENCE.

With all its appurtenances.

CORRECTION DEED - DOCUMENTARY FEE IS NOT REQUIRED.

This Deed is executed to properly identify the Grantee in those Deeds recorded in Book 2921 at Pages 857, 859, 861 and 864 of the records of the Clerk and Recorder of Jefferson County, Colorado.

EXECUTED this 31st day of March, 1981.

Maryanna Quaintance Johnson
Maryanna Quaintance Johnson

Patricia Quaintance Bradley
Patricia Quaintance Bradley
as Personal Representatives of the
Estate of Mary Ross Quaintance, aka
Mary R. Quaintance, aka Mary Quaintance,
aka Mrs. A. D. Quaintance, aka Mrs.
Arthur D. Quaintance, aka Mrs. Arthur
Dunning Quaintance, an unmarried
person, Deceased.

EXHIBIT

A

State of Colorado
APR 22 1981
12.00

81027695

2

STATE OF COLORADO)
) ss.
County of Jefferson)

The foregoing instrument was acknowledged before me this
31st day of March, 1981, by Maryanna Quaintance Johnson and
Patricia Quaintance Bradley as Personal Representatives of the
Estate of Mary Ross Quaintance, aka Mary R. Quaintance, aka
Mary Quaintance, aka Mrs. A. D. Quaintance, aka Mrs. Arthur D.
Quaintance, aka Mrs. Arthur Dunning Quaintance, an unmarried
person, Deceased.

Witness my hand and official seal.

My commission expires: 3-9-85

Kathryn E. Isenberg
Notary Public



LEGAL DESCRIPTIONSParcel 1.

Lots 188H, 188I, except that portion conveyed to Forest Heights Lodge, Inc., Lot 188A, Lot 188F, Lot 188G and Lot 188W, Forest Hills, Second Filing.

Parcel 2.

Lots 1 and 2, Block 8, Indian Hills 2nd Filing.

Parcel 3.

All that part of the SE 1/4 SW 1/4 of Section 27, Township 4 South, Range 69 West, described as follows: Commencing at a point where Northerly line of the Morrison Road intersects the North line of said SE 1/4 of the SW 1/4 of Section 27, running thence Westerly along said Northerly line of said Morrison Road a distance of 250 feet; thence North and at right angles to the North line of said SE 1/4 of the SW 1/4 of Section 27, thence along said North line to the point where said North line intersects the North line of said Morrison Road, said point being the place of beginning.

Parcel 4.

NE 1/4, Section 26, Township 4 South, Range 71 West.

Parcel 5.

Teddy Bear Claim, Survey #19947A; Jessie P. Claim, Survey #19947A; and Teddy Bear Mill Site, Survey #19947B, except parts sold; all located in Section 15, Township 5 South, Range 71 West.

Parcel 6.

Lots 21 to 24, Block 6, Wanderrest Park.

Parcel 7.

Lots 2 and 6, Block 3; Lots 1 and 2, Block 5; Lot 1, Block 7; Lots 10, 11, 12, 13, 15, 17 and 18, Block 5; Lots 2, 5 through 12, and 14, Block 6, all situate in Tiny Town Subdivision.

E 1/2 Section 21, Township 5 South, Range 70 West, except parts sold.

W 1/2 Section 22, Township 5 South, Range 70 West, except parts sold.

Parcel 8.

Undivided 1/2 interest in and to: S 1/2 of Section 11, Township 4 South, Range 70 West.

Parcel 9.

A tract of land in the SE 1/4 of Section 17, Township 4 South, Range 70 West, described as follows: Starting at a point whence the E 1/4 corner of Section 17 bears North 77° 20' East 1862.5 feet and running South 16° 35' West 360 feet; thence North 73° 25' West 300 feet; thence North 16° 35' East 360 feet; thence South 73° 25' East 300 feet to point of beginning, except a strip of land 60 feet wide being a state highway, containing 2.07 acres, more or less, except that portion conveyed to the Department of Highways, State of Colorado (1/3 Lillian)

Lots 242 and 243, Starbuck Heights. (1/2 Lillian)

Parcel 10.

S 1/2 of the SW 1/4 of Section 28, Township 4 South, Range 70 West.

Parcel 11.

Lots 245 and 247, Starbuck Heights.

Parcel 12.

Lots 1-14, inclusive, Block 24, Morrison
 Lots 25-29, inclusive, Block 24, Morrison
 Lots 1-27, inclusive, Block 25, Morrison
 Block 7, Morrison
 Lots 1 and 2, Block 3, Morrison First Addition
 Outlot 9, Morrison Second Filing

Part of N 1/2 NE 1/4 of Section 2, Township 5 South, Range 70 West, containing 43.59 acres more or less, except part platted as Morrison and except parts sold, as shown by conveyances recorded in Book 211, Page 174; Book 244, Page 47; Book 261, Page 400; Book 179, Page 437; and Book 359, Page 251; and Book 106, Page 14.

Parcel 13.

Commencing at a point on the Northerly line of Section 2, Township 5 South, Range 70 West, 500 feet Westerly of N.E. corner of said Section 2, Thence at right angles to point of intersection of now traveled County Road, thence Northwesterly along line of said road to intersection of said road with North line of said Section 2, thence Easterly along said Northerly line of said Section to place of beginning.

Part of SE 1/4 SE 1/4 of Section 35, Township 4 South, Range 70 West containing 29 acres, more particularly described in conveyances recorded in Book 239, Page 505, and Book 244, Page 52, except portions conveyed as shown by conveyances recorded in Book 212, Page 497, Book 216, Page 273, of Jefferson County records.

Parcel 14.

An undivided 1/2 interest in and to: SE 1/4, Section 17, Township 4 South, Range 70 West, except parts sold.

An undivided 1/2 interest in and to: N 1/2 NE 1/4, N 1/2 SW 1/4 NE 1/4 of Section 20, Township 4 South, Range 70 West.

Parcel 15.

An undivided 10/38ths interest in and to the following described property situate in the County of Jefferson, State of Colorado described as follows:

Lots 17 and 18, Block 22, Pleasant View Second Filing;
SW 1/4, Section 31, Township 3 South, Range 70 West;
SE 1/4 SE 1/4, Section 31, Township 3 South, Range 70 West;
SE 1/4 of Section 36, Township 3 South, Range 71 West;
N 1/2 NE 1/4 and NE 1/4 NW 1/4 of Section 6, Township 4 South, Range 70 West;
NE 1/4 and NW 1/4 of Section 3, Township 4 South, Range 71 West;
N 1/2 N 1/2 of Section 4, Township 4 South, Range 71 West;
N 1/2 of Section 5, Township 4 South, Range 71 West;
Eclipse Placer in NE 1/4 of Section 1, Township 4 South, Range 72 West;
N 1/2 of Section 6, Township 4 South, Range 71 West;
N 1/2 of Lot 4, also known as NW 1/4 NW 1/4 of Section 6, Township 4 South, Range 70 West;
Lots 30 through 33, Block E, SW of road, Mt. Vernon Club Place;
Lots 80 and 81, Block F, Mt. Vernon Club Place;
Lots 282 and 283, Block A, Mt. Vernon Club Place;
Lots 374 and 375, Block C, Cody Park;
Lot 7, Block 30, Wah Keeney Park, 2nd Filing;
Lots 21 and 22, Block 2, Troutdale;
Lots 28 and 29, Block 44, Mountain Park Homes;
Lots 17, 28 and 35, Block 53, Mountain Park Homes;
S 1/2 of Lot 12, Block 54, Mountain Park Homes;
Lot 20, Block 55, Mountain Park Homes;
Lots 1, 10 and 11 and 22, Block 64, Mountain Park Homes;
Lots 1 and 3 through 9, Block 67, Mountain Park Homes;
Lot 16, Block 68, Mountain Park Homes;
Lots 3 and 8, Block 71, Mountain Park Homes;
Lots 2 through 7, Block 85, Mountain Park Homes;
Lots 10 and 11, Block 88, Mountain Park Homes;
Lots 10 through 13, Block 89, Mountain Park Homes;
Lots 14 and 15, Block 90, Mountain Park Homes;
Lots 16 through 21, and 26 and 27, Block 91, Mountain Park Homes;
Lot 1, Block 92, Mountain Park Homes;
Lots 15 and 22, Block 94, Mountain Park Homes;
Lots 13 and 14, Block 97, Mountain Park Homes;
Lots 24, 25 and 26, Block 102, Mountain Park Homes;
Lots 4 through 7 and 23 through 27, Block 105, Mountain Park Homes;
Lots 7, 8 and 26, Block 106, Mountain Park Homes;
Lots 7, 8, 13, 21 and 22, Block 107, Mountain Park Homes;
Lots 12 and 13, Block 110, Mountain Park Homes;
Lots 142 and 143, Block D, Moss Rock;
Lots 35 and 36, Block E, Moss Rock;
25' x 125', NW 1/4 NE 1/4 NE 1/4 of Section 12, Township 7 South, Range 72 West;
50' x 100', NW 1/4 NE 1/4 NE 1/4 of Section 12, Township 7 South, Range 72 West;
50' x 125', SE 1/4 SW 1/4 of Section 23, Township 7 South, Range 70 West;

Except all easements and rights of way of record.

EXHIBIT "A"Page 4 of 4Parcel 16.

That part of the South 1/2 of the Northeast 1/4 of Section 10, Township 5 South, Range 71 West of the 6th P.M., described as follows: Commencing at the Northwest corner of that certain tract of land conveyed to John Ross by Mary N. Williams, by Warranty Deed, dated March 8, 1899, recorded in Book 106, Page 64 of the Records of Jefferson County, Colorado, thence Easterly along the Northerly boundary line of said tract of land 27.0 feet to the point of beginning; thence Southerly on a line parallel to the Westerly boundary line of said tract of land to the Northerly boundary line of apparently existing State Highway No. 74; thence Easterly along the Northerly line of said highway 45.0 feet; thence Northerly on a line parallel to the Westerly boundary line of said tract of land to the Northerly boundary line of said tract of land; thence Westerly along the Northerly boundary line of said tract of land 45.0 feet to the point of beginning, except that portion thereof described in Book 1746 at Page 29.

Parcel 17.

Lot 153, Mary N. Williams Estates, except parts sold.

Parcel 18.

Lots 1, 2, 3, the North 100 feet of Lot 4, the North 100 feet of the East 1/2 of Lot 5, all of the West 1/2 of Lot 5, all of Lots 6, 7, 8, 9, 10, 11, the West 1/2 of Lot 12, that part of Lot 21 lying North of State Primary Road No. 27 and South of said West 1/2 of said Lot 12, and that part of Lots 14, 15, 16, 22, 23 and 24 lying North of said State Primary Road No. 27, all in Kittredge, (a townsite) per amended map of same on file in said Jefferson County.

State Documentary Fee
20.62
NOV 1 1976

2921 874

PARK OF THE RED ROCKS CORPORATION

whose address is

County of Jefferson, and State of

Colorado, for the consideration of (\$206,200.00) Two

Hundred Six Thousand Two Hundred and Dollars, in hand paid,

Thereby sell(s) and quit claim(s) to

BEAR CREEK DEVELOPMENT CORPORATION

whose address is

County of Jefferson, and State of Colorado

, the following real

property, in the

County of Jefferson

, and State of Colorado, to wit:

See Exhibit A attached hereto and made a part hereof.

with all its appurtenances

Signed this 25th day of October, 1976

PARK OF THE RED ROCKS CORPORATION

By Leo N. Bradley, President

STATE OF COLORADO,

County of Jefferson

The foregoing instrument was acknowledged before me this 25th day of October, 1976, by Leo N. Bradley as President of Park of the Red Rocks Corporation.

My commission expires 3-12-77
Witness my hand and official seal

Kathryn D. Lindgren
Notary Public

2921 874

EXHIBIT

B

EXHIBIT A

Parcel 1.

NE 1/4 NE 1/4, Section 33, Township 4 South,
Range 70 West.

Parcel 2.

SE 1/4 NW 1/4; S 1/2 NE 1/4; NE 1/4 NE 1/4;
Section 3, Township 5 South, Range 70 West.

~~Parcel 3.~~

That part of NW 1/4 NW 1/4, Section 1, Township
5 South, Range 70 West, lying South and West of County Road.

SE 1/2 SE 1/4 SW 1/4, Section 26, Township 4 South,
Range 70 West.

~~NW 1/2 SW 1/4~~ Section 27, Township 4 South, Range
70 West.

N 1/2 NW 1/4, W 1/2 NW 1/4 NE 1/4, SW 1/4 NE 1/4,
NW 1/4 SE 1/4, and W 1/2 NE 1/4 SE 1/4, Section 34, Town-
ship 4 South, Range 70 West.

Parcel 4.

Outlots 5, 6, 7 and 10, Morrison, Second Addition.

Parcel 5.

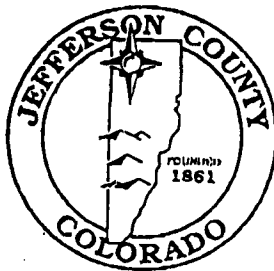
That portion of the S 1/2 of the SE 1/4 of Section
35, Township 4 South, Range 70 West of the 6th P.M., on the
Northerly side of Bear Creek, bounded on the Northerly side
by the Southerly line of Market Street, and on the Westerly
side by South Park Avenue, and on the Southerly and Easterly
sides by the center line of Bear Creek, excepting that portion
of Block 5 lying South of the present Southerly line of Market
Street, except that portion described in Book 1612, Page 134
(Merchants Oil), and except the second parcel described in
Book 851, Page 481 (Continental Oil).

Parcel 6.

E 1/2 NW 1/4, and that portion of NE 1/4 SW 1/4
except part sold to R-1 School District, Section 35, Township
4 South, Range 70 West.

Parcel 7.

SW 1/4 SE 1/4 and SE 1/4 SW 1/4, Section 35, Township
4 South, Range 70 West except parts platted, except parts sold.



Board of County Commissioners

Michelle Lawrence
District No. 1
Patricia B. Holloway
District No. 2
Richard M. Sheehan
District No. 3

August 2, 1999

Mr. Leo N. Bradley, Esq.
Bradley, Campbell, Carney & Madsen
1717 Washington Avenue
Golden, CO 80401

RE: Case No. SU81-1

Dear Mr. Bradley:

The above-referenced case granted approval of a Special Use to locate a microwave relay station 60' above the crest of the hill at Mount Morrison. In the time since the Special Use was approved in 1981, a permit (9609571BP1) was issued by the County in 1996 to allow an interior remodel of the equipment building, and a miscellaneous permit (9808832MS1) was issued to Sprint in 1998 for a PCS installation. Our records indicate that a miscellaneous permit (9612116MS1) is pending for alteration to the tower, applied for in 1996 but never approved. There are no other permits on record, nor correspondence on file, approving any additional antennas for this site. The plans submitted at the time of the Special Use approval included a schematic of a tower with microwave dishes and antenna for two-way communicators, and labeled the facilities transmitting and receiving stations. These plans illustrate what was approved by the Board of County Commissioners.

There are several antennas on the tower which were erected without County approval. These include TV broadcast antennas and several antennas for paging and two-way communication. One of the TV antennas is mounted on the top of the tower, bringing the overall height to 100' above the crest of the hill where, as noted above, Case No. SU81-1 limited the height of the tower to a maximum of 60'.

Jefferson County filed a verified complaint with the Court (98CV969) which, in paragraph 5 stated, "*Defendant has constructed and/or used a tower which is taller than sixty feet on the property. The tower is being used as a television broadcast tower. This was done without approval from the County.*" Although the County filed this lawsuit in 1998, no formal interpretation was issued by the Zoning Administrator prior to the lawsuit.

Section 2.N.1.a. of the Jefferson County Zoning Resolution states, "...all new telecommunications towers, antennas and accessory facilities...for the following uses must be submitted for rezoning to Planned Development or for Special Use approval: radio, television, microwave, meteorological data collection, land-mobile, and other similar broadcast transmission and receiving activities." It is my determination that each one of the activities or uses is an independent activity and therefore TV could not be placed where land-mobile was approved, nor could a TV antenna be located where microwave was approved, etc.

Mr. Leo N. Bradley, Esq.

August 2, 1999

Page 2

Section 2.N.1.b. goes on to address additional antennas, specifically, "*Unless in conflict with the Official Development Plan or Special Use approval, additional antennas and equipment may be added to a facility that has received zoning or Special Use approval...*" It is my determination that adding a TV antenna where a microwave relay station was approved by the Board of County Commissioners is in conflict with the Special Use approval. The original approval for the microwave relay station involved a point-to-point transmission where a broadcast tower sends signals directly to the general public, as established in a meeting between yourself and County staff. This is a significant difference in activity.

I believe the original complaint filed by the County in District Court is accurate, and that the tower remains in violation. The Court case was dismissed because Bear Creek Development Corporation indicated their intent and did, in fact, file a substantial change request to allow the increased height and broadcast use. That request was heard and denied by the Board of County Commissioners. You indicated, in an April 1, 1998 letter, that if the County feels a zoning violation continues to exist, you would not object to re-filing of the Court case.

Finally, since low power antennas were also shown on the schematic originally submitted in the Special Use case, it is my determination that the antennas (pager, PCS, cellular, etc.) on this tower can be approved. Even if the tower were a legal non-conforming tower, 25' long, 8" diameter antennas would be allowed provided the antenna is less than 200' above the base of the tower. A miscellaneous permit is required. Again, please note that this should not be construed to mean that a broadcast tower is allowed, as such use is not consistent with the special use approval for a microwave relay station.

I hope this letter helps to clarify my position relative to this case. If you have any questions or need additional clarification, please feel free to contact me.

Sincerely,



Mary Bunn,
Zoning Administrator

MB:tmf

cc: Scott Albertson
Frank Hutfless
David Hughes
Dan Brindle
Richard Turner
Mike Chadwick
Russ Clark
Jim Hart

Mr. Ingram moved that the following Resolution be adopted:

BEFORE THE BOARD OF ADJUSTMENT

COUNTY OF JEFFERSON

STATE OF COLORADO

RESOLUTION NO. 99-113

CASE NO: A99-113 ZONE DISTRICT: A-2/SU
APPELLANT: BEAR CREEK DEVELOPMENT CORPORATION
LOCATION: 2504 South Grapevine Road – Metes & Bounds in Section 27, Township 4
South, Range 70 West
PURPOSE: Appeal of the Zoning Administrator's determination regarding the height and use
of an existing tower on Mount Morrison, approved under Special Use Case No.
SU81-1.

WHEREAS, the Zoning Administrator issued a determination regarding the use and height of an existing tower on property located on Mt. Morrison and owned by Bear Creek Development Corporation (Appellant). The determination was two-fold: (1) broadcast use is not a permitted use; and (2) the overall height of the tower and antenna of 110' is in excess of the permitted height of 60'; and

WHEREAS, an application was filed appealing that decision; and

WHEREAS, the Board of Adjustment is vested with authority to hear and decide upon such appeals by virtue of Section 13-D-1 of the Jefferson County Zoning Resolution; and

WHEREAS, based on the evidence, testimony, exhibits, comments of public officials, agencies, and staff, and comments from all interested parties, this Board finds as follows:

1. Proper posting and public notice was provided as required by law for the hearing before the Board of Adjustment of Jefferson County.
2. The hearing before the Board of Adjustment was extensive and complete, all pertinent facts, matters, and issues were submitted, and all interested parties were heard at this hearing.
3. In 1981, the Board of County Commissioners adopted Resolution No. CC81-512 wherein the Commissioners approved a Special Use to allow a "Microwave Relay Station" (SU81-1). The Resolution included a provision that the applicant (Applicant in this case) agreed to comply with the requirements contained in the Planning Commission's resolution.
4. The Planning Commission's resolution included a condition that the tower be no more than 60' tall.


5. In Case No. SU81-1, the Appellant requested approval of a "microwave relay station". The Appellant submitted a graphic that depicts the appearance and scope of the requested facility. The graphic illustrates a tower of approximately 60' in height with several dishes attached to the side of the tower.
6. In 1996, a broadcast television user was placed on the tower without first obtaining any approval from Jefferson County.
7. There was extensive testimony and exhibits presented to this Board relative to the similarities and differences between a "microwave relay station" and "broadcast television". The Appellant contends that SU81-1 was not intended to restrict use of the tower to a microwave relay station but, instead, was intended to generally allow a communications tower or telecommunication facility, including a broadcast television facility. The opposition testified that broadcast television is a different, more extensive use than a microwave relay station. The Zoning Administrator testified that these two uses are separate and distinct and that approval of a microwave relay station does not also allow a broadcast television use.
8. Based on the application and graphic submitted in SU81-1 and language of Resolution CC81-512, this Board finds that a "microwave relay station" is the use that is allowed in SU81-1. Broadcast television is a use that is different from a microwave relay station, and is not an allowed use in SU81-1.
9. The Zoning Resolution, Section 13.D.12., states that "No relief, variance or exception shall be granted which shall effectively change a land use on a permanent basis". Approval of this appeal would permanently change the land use allowed by SU81-1 from solely a microwave relay station to a microwave relay station and/or broadcast television, in violation of Section 13.D.12.
10. Since television broadcasting is a change in the land use, the proper procedure is to request that the Board of County Commissioners approve an amendment to SU81-1 to allow this new use.
11. The height of the existing principal tower is approximately 60'. Attached to the tower is a support pole that is approximately 50' in height. Attached to the support pole is an antenna. The total height of the principal tower and support pole/antenna is 110'.
12. The support pole is considered a part of the tower and, accordingly, the height of the support pole is considered in determining the height of the tower.
13. The graphic submitted by the Appellant in SU81-1 illustrates the 60' tower; it does not illustrate the 50' support poles/antenna. An increase of 50' in height for this facility creates an additional negative impact and is not consistent with the 60' height limitation.

NOW, THEREFORE, BE IT RESOLVED that the interpretation of the Zoning Administrator is hereby AFFIRMED.

The above motion was seconded by Mr. Eckert. The roll having been called, the Resolution was adopted by a vote of 4-1, as follows:

Mrs. Bowerman	-	"nay"
Mr. Mues	-	"aye"
Mr. Eckert	-	"aye"
Mr. Ingram	-	"aye"
Mr. Holt	-	"aye"

I, Tammy Ferrel, Administrative Coordinator for the Jefferson County Board of Adjustment, hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the Jefferson County Board of Adjustment at a regular hearing held in Jefferson County, Colorado, on the 20th day of October, 1999.



Tammy Ferrel, Administrative Coordinator
Jefferson County Board of Adjustment

Appendix W

Official Copy of Colorado Senate Joint Resolution 00-031 Against Preemption



Colorado General Assembly

SENATE JOINT RESOLUTION 00-031

BY SENATORS Sullivant, Congrove, Evans, Teck, and Tebedo;
also REPRESENTATIVES Witwer, Ragsdale, and Young.

CONCERNING URGING THE FEDERAL COMMUNICATIONS COMMISSION TO
REJECT LAKE CEDAR GROUP'S PETITION TO PREEMPT LOCAL
GOVERNMENT LAND USE DECISION-MAKING AUTHORITY.

WHEREAS, According to its comprehensive plan and its duly adopted zoning regulations, the Board of County Commissioners of Jefferson County, Colorado denied an application by Lake Cedar Group, LLC, to rezone land on Lookout Mountain from residential and agricultural zoning to planned development zoning in order to allow construction of an 854-foot telecommunications supertower and a 26,000 square foot support building; and

WHEREAS, Such decision was a quasi-adjudicative decision based on factual evidence presented to the Jefferson County Board of County Commissioners and application of applicable legal standards and as such can be appealed judicially to Jefferson County District Court, which court is fully empowered to grant full and appropriate relief to the appellant if appropriate under the facts of the case; and

WHEREAS, Lake Cedar Group filed an appeal of Jefferson County's decision in Jefferson County District Court, which appeal is now pending the filing of briefs by the parties; and

WHEREAS, Despite the pending judicial appeal, and after Jefferson County spent several months preparing the voluminous record of proceedings for the Jefferson County District Court action, Lake Cedar Group, without notifying the Jefferson County Board of County Commissioners or any other interested party, filed a petition with the Federal Communications Commission (FCC) requesting the FCC to "preempt" Jefferson County's decision and to declare Jefferson County's decision "prohibited and unenforceable"; and

WHEREAS, By Public Notice dated April 10, 2000, the FCC seeks public comment on Lake Cedar Group's petition; and

WHEREAS, In the United States, control over individual land use decisions is firmly vested in local governments, through statutory delegation from state governments; and

WHEREAS, The FCC is barred by the 10th Amendment to the United States Constitution from attempting to preempt decisions made by local governments on individual land use applications because the United States Congress has not directed or authorized the FCC to preempt such local decisions; and

WHEREAS, The FCC lacks not only the authority, but also the expertise and any adopted standards to second-guess and invalidate local government land use decisions; and

WHEREAS, Any attempt by the FCC to preempt local government land use decision-making in this manner would represent an illegal, unauthorized, and unjustified attack on state- and local- government land use authority; now, therefore,